Chieng Hock Wong v Lim Guan Liong

HIGH COURT (SRI AMAN) — ORIGINATING SUMMONS NO 24-04-2002 OF I(SG)
CLEMENT SKINNER J
16 MAY 2003

Land Law *— Restraint on dealings — Caveats — Loan agreement entered — Defendant failed to repay loan — Plaintiff effected transfer but rejected as defendant lodged caveat — Whether plaintiff had locus standi to make application for removal of caveat — Sarawak Land Code s 177(1)*

This was the plaintiff's application for the removal of a caveat lodged by the defendant over a piece of land. The defendant was the registered proprietor of the land. A loan agreement was earlier entered into by both parties. The plaintiff granted the defendant a loan which was to be repaid in full failing which the defendant would transfer all his right title and share in the land to the plaintiff and a memorandum of transfer was executed in favour of the latter. The defendant did not repay the loan on its due date. Therefore, the plaintiff took steps to effect a transfer of the land to his name but it was rejected by the land registry as the defendant had lodged a caveat against the land. Hence, this application. The issue was whether the plaintiff had locus standi to make the application virtue of s 177(1) of the Sarawak Land Code.

Held, dismissing the plaintiff's applicaiton with costs:

A person who wishes to remove a caveat under the provision of s 177(1) of the Sarawak Land Code must show that he is either the registered proprietor of the said land or he is a person having a registered estate or interest in the said land. While the plaintiff might presently be in possession of a registrable instrument of transfer, that fact did not clothe him with the necessary locus standi under s 177(1) because that section specifically required the interest claimed to be a 'registered' interest. Thus, as the plaintiff had no locus standi to make this application, it must fail (see pp 481E, I–482A, F); *Teng Hung Ping v Hoan Siew Choo @ Fan Siew Choo & 2 Ors* [1993] 2 CLJ 662 followed.

[Bahasa Malaysia summary

Ini adalah permohon plaintif untuk membatalkan kaveat yang dimasukkan oleh defendan ke atas sekeping tanah. Defendan adalah tuanpunya berdaftar tanah tersebut. Satu perjanjian pinjaman sebelum ini telah dimasuki oleh kedua belah pihak. Plaintif telah memberikan defendan satu pinjaman yang perlu dibayar balik dan jika gagal defendan akan memindahkkan semua hakmilik dan bahagian dalam tanah tersebut kepada plaintif dan satu memorandum pemindahan telah dilaksanakan bagi pihak plaintif. Defendan tidak membuat bayaran balik pinjaman tersebut pada hari ia perlu dibayar.

Oleh itu, plaintif telah mengambil langkah untuk melaksanakan satu pemindahan tanah tersebut atas nama beliau tetapi ia telah ditolak oleh pendaftar tanah kerana defendan telah memasukkan satu kaveat ke atas tanah tersebut. Justeru itu, permohonan ini dibuat. Persoalannya adalah sama ada plaintif mempunyai had locus standi untuk membuat permohonan tersebut menurut s 177(1).

Diputuskan, menolak permohonan plaintif:

Seseorang yang berhasrat untuk membatalkan satu kaveat di bawah peruntukan s 177(1) Kanun Tanah Sarawak hendaklah menunjukkan bahawa beliau adalah tuanpunya berdaftar tanah tersebut atau beliau seorang yang mempunyai estet atau kepentingan berdaftar dalam tanah tersebut. Walaupun plaintif mungkin sekarang mempunyai satu suratcara pindahmilik berdaftar, fakta tersebut tidak melindungi beliau dengan locus standi seperti yang diperuntukkan dalam s 177(1) kerana seksyen tersebut dengan khusnya menghendaki kepentingan yang dituntut sebagai satu kepentingan yang 'registered'. Oleh itu, memandangkan plaintif tidak mempunyai locus standi untuk membuat permohonan ini, ia harus gagal (lihat ms 481E, I–482A, F); *Teng Hung Ping v Hoan Siew Choo @ Fan Siew Choo & 2 Ors* [1993] 2 CLJ 662 diikut.

Notes

For cases on caveats, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3015–3312.

Cases referred to

Guardian Trust and Executors Company of New Zealand v Hall [1938] NZLR 1020 (refd)

Teng Hung Ping v Hoan Siew Choo @ Fan Siew Choo & 2 Ors [1993] 2 CLJ 662 (folld)

Legislation referred to

Money Lenders Ordinance Sarawak (Cap 11)
Sarawak Land Code ss 173, 177(1), 178

Lam Ko Luen (*David Allan Sagah & Teng*) for the plaintiff.
Fabian AH Lim (*Lim & Lim*) for the defendant.

Clement Skinner J: This is the hearing of an application by the plaintiff for the removal of a caveat lodged by the defendant over land known as Lot 251, Block 8, Awik-Krian Land District ('the said land'). The defendant is the registered proprietor of the said land. The facts leading up to this application are these.

On 16 July 2001, the plaintiff and the defendant entered into a loan agreement wherein the plaintiff granted the defendant a loan of RM17,700 ('the said loan') which was to be repaid in full by the defendant on or before

16 January 2002 failing which the defendant would transfer all his rights, title and share in the said land to the plaintiff. The defendant also executed a memorandum of transfer in favour of the plaintiff but left it undated. The plaintiff alleges that the memorandum of transfer was so executed and handed over to him so that in the event the defendant should fail to repay the said loan on or before 16 January 2002, the said land would be transferred to him. The plaintiff further alleges that the defendant handed over the document of title to the said land as well as the quit rent booklet in respect thereof to a firm of advocates acting for him to enable the said land to be transferred to him if the defendant failed to repay the said loan by the due date.

The defendant, however, gives a different explanation as to why the loan agreement was entered into and the memorandum of transfer executed in favour of the plaintiff. He maintains that his son borrowed a sum of RM15,000 from the plaintiff who charged interest thereon at 36%pa on the said sum totalling RM2,700 for a six-month period. As security for the full loan of RM15,000 and interest of RM2,700, the plaintiff requested the defendant to enter into the said loan agreement on 16 July 2001 and to execute the memorandum of transfer, which he did. The defendant maintains that he had no intention of selling his land to the plaintiff or to allow the plaintiff to effect a transfer of the said land outright for a mere sum of RM17,000 as the value of the said land is over RM100,000.

As matters transpired, the defendant did not repay the said loan on its due date. The plaintiff therefore claims to be entitled to a transfer of the said land and took steps to effect a transfer of the same to his name but the land registry rejected the transfer as the defendant had on 4 April 2002, lodged a caveat against the said land. Hence this application to remove the defendant's caveat.

In seeking a removal of the defendant's caveat, the plaintiff relies on several grounds. They are:

(a) the defendant does not have a caveatable interest in the said land, in that, he is already the registered proprietor thereof and so cannot bring himself within the provisions of s 173 of the Sarawak Land Code which states:

> Any person —
>
> (a) claiming to be entitled to or to be beneficially interested in any land, estate or interest under this Code by virtue of any unregistered agreement or other instrument or transmission, or of any trust express or implied or otherwise howsoever;
> (b) who is a guardian of the property of an infant beneficially interested in any land or any estate or interest therein; or
> (c) transferring any estate or interest under this Code to any other person to be held in trust,
>
> may at any time lodge with the Registrar a caveat in Form O in the First Schedule.

(b) even if it can be said that the defendant has a caveatable interest in the said land, his claim to such interest does not raise any serious question

to be tried as the defendant's complaints about the loan agreement being illegal and void as a money lending transaction are baseless and an after-thought;

(c) the balance of convenience does not lie in favour of allowing the caveat to remain against the said land until the trial of the defendant's claim.

The defendant on the other hand seeks to resist the plaintiff's application to remove his caveat on the following grounds:

(a) the plaintiff has no locus standi to apply for a removal of the caveat as he is not a person who comes within the provisions of s 177(1) of the Sarawak Land Code;

(b) if the plaintiff does have the necessary locus standi, then the caveat should not be removed because the said loan agreement only acts as a form of security for the loan of RM17,700, and the execution of the memorandum of transfer and handing over of the document of title to the said land was to serve the same purpose, that is, only as a form of security for the said loan. Besides, the defendant had no intention to sell the said land and the loan agreement is not a sale and purchase agreement;

(c) the defendant further contends that under the Sarawak Land Code, he has every right to redeem his land even though the time for repayment of the loan has expired, and that both he and his son have made attempts to repay the loan with interest but the plaintiff has refused to accept payment. In the circumstances, it is unfair and unjust for the plaintiff to refuse the defendant's right of redemption provided under the Sarawak Land Code;

(d) on 22 June 2002, the defendant has filed a civil suit numbered 22–02–2002–11 to obtain a declaration that the loan agreement is illegal, void and unenforceable against him on grounds that it is a money lending transaction that was entered into contrary to the provisions of the Money Lenders Ordinance Sarawak (Cap 11);

(e) he is entitled to caveat his own land to prevent his right and interest in the said land being transferred away.

Since it is the plaintiff who moves this court for a removal of the caveat, and since his locus standi to do so has been challenged, it is my view that he carries the initial burden of showing that he has the necessary standing to do so. The plaintiff contends that the defendant should be estopped from taking the locus standi point as he had not raised it on previous occasions when this matter came before the court, but had instead kept asking for an adjournment of the proceedings on other grounds. I regret that I cannot uphold this objection because it is well accepted that a caveat is a creature of statute (see *Guardian Trust and Executors Company of New Zealand v Hall* [1938] NZLR 1020) and, in the case of land in Sarawak, the right to lodge or to remove a private caveat (as opposed to a registrar's caveat) is governed by the relevant provisions found in the Sarawak Land Code. As far as the removal of a caveat is concerned, this is governed by the provisions

A contained in two sections of the Code, namely, ss 177 and 178. Of these two sections, the plaintiff seeks to avail himself to the right of removal mentioned in s 177(1) which states that:

> Any registered proprietor or any person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.

B

So unless the plaintiff is able to demonstrate that he is such a person as is mentioned in s 177(1), he cannot avail himself of any rights thereunder. If the plaintiff cannot establish that he has locus standi to make the application under s 177(1), then in my opinion he cannot 'acquire' the C necessary locus standi by the defendant being prevented from taking the point because even if the defendant is prevented from taking the point, that will still not make him such a person as is mentioned in s 177(1).

So does the plaintiff have the necessary locus standi to make his application under s 177(1) of the Code?

D It will be noticed that by its terms, s 177(1) identifies the persons who may apply for a removal of a caveat under its provisions. The section refers to 'a registered proprietor or any person having a registered estate or interest' in land which has been caveated. This is to be contrasted with the position under s 178 where the procedure for the removal of a caveat can be E set in motion without the person seeking to do so having to show any 'registered' interest in the land. So, by the very wording of the section, a person who wishes to remove a caveat under its provisions must show that he is either the registered proprietor of the said land or he is a person having a registered estate or interest in the said land. Can the plaintiff bring himself within these words in the section? According to the defendant, he clearly F cannot do so because even though the plaintiff may hold the duly executed memorandum of transfer and document of title to the said land, whatever interest he may claim in the said land by virtue of being in possession of those documents, he is presently not the registered proprietor of the said land nor is he a person having a registered estate or interest in the said land.

G In my judgment, the defendant is correct in his submissions and is supported in what he says by at least two cases. In *Teng Hung Ping v Hoan Siew Choo @ Fan Siew Choo & 2 Ors* [1993] 2 CLJ 662, it was held by his Lordship Richard Malanjum J (as he then was) that an administrator of an estate in whose name the land of the estate had not yet been registered has no locus standi to apply for a removal of the caveat. And in *Loh Ing Kiong & Lu Yue Lee v Chieng Yong Tiong* (Sibu High Court, Originating Motion H No 2 of 1982, unreported) his Lordship Chong Siew Fai J (as he then was) held that the developers of land who had agreed to share the houses which were to be built thereon with the landowners but who at the date of the removal proceedings had not become registered as the owners of the houses to which they were entitled to had no locus standi to apply for the removal I of the caveat.

It is thus clear to me that while the plaintiff may presently be in possession of a registrable instrument of transfer, that fact would not clothe

him with the necessary locus standi under s 177(1) because that section specifically requires the interest claimed to be a 'registered' interest.

In coming to the above conclusion, I have not overlooked the submission made by learned counsel for the plaintiff on the point. He urged me to interpret s 177(1) in a wide and liberal manner because according to him, on its proper reading, the section consists of six limbs, two of which do not require 'registration' as a qualifying condition. He identified the six limbs to the section as being:

(a) any registered proprietor having a registered estate against which a caveat has been lodged; or

(b) any registered proprietor having interest in the estate against which a caveat has been lodged; or

(c) any registered proprietor having interest against which a caveat has been lodged; or

(d) any other person having a registered estate against which a caveat has been lodged; or

(e) any other person having interest in the estate against which a caveat has been lodged, or

(f) any other person having interest against which a caveat has been lodged.

If I were to read the section in the way counsel for the plaintiff has, then the plaintiff would clearly fall within its last two limbs since 'registration' is not a requirement under them. I regret, however, that I am unable to agree with the submission of counsel. If it was the intention of the legislature that a person applying under s 177(1) need not have some registered interest in the land, then it would have been a simple matter to leave out the word 'registered' in the section. I am fortified in my view that registration is the important qualification in s 177(1) because by contrast, registration is not a requirement when a caveat is sought to be removed under s 178 of the Sarawak Land Code.

As the plaintiff has no locus standi to make this application, it must fail. However, as pointed out by his Lordship Richard Malanjum J in *Teng Hung Sing*, while this decision may appear harsh, the plaintiff is not left without a remedy because he can avail himself to the provisions of s 178 of the Sarawak Land Code to seek a removal of the defendant's caveat. In the light of that possibility, I do not think it would be prudent for me to go on further to consider the other grounds upon which this application is made or resisted by the defendant.

In the result I dismiss the plaintiff's application with costs.

Plaintiff's applicaiton dismissed with costs.

Reported by Ezatul Zuria Azhari